

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4434 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHOKKUMAR B RAVAL

Versus

BAREJA GRAM PANCHAYAT

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Appearance:

MR HAROOBHAI MEHTA Sr. Advocate with Instructing  
Counsel Shri Ketan Dave for the Petitioner  
MR HL PATEL for Respondent No. 1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/96

ORAL JUDGEMENT

1. The petitioner is challenging the validity of the order dated 2-6-1982 of the respondent which has been made in pursuance of the resolution of the Gram Panchayat dated 4-5-1982 under which his services were ordered to be dispensed with. The petitioner joined the services of the respondent on 25th September, 1975 as an Octroi clerk. His appointment has been made as per the

resolution of the respondent dated 14th November, 1975. Initially the appointment of the petitioner was on temporary basis, but subsequently he was confirmed. The petitioner could not attend his duties from 18th April, 1982 on account of sickness. He submitted the leave application to the respondent. The details of the leave applications which has been sent by the petitioner from time to time has been given in para no.2 of the Special Civil Application. On 15th May, 1982, the petitioner has attended the office of the respondent, but again he proceeded on leave as he was not fully well. Under the order dated 2-6-1982 his services were terminated.

2. The reply to the Special Civil Application has not been filed, and as such, the averments made therein stands uncontroverted.

3. The counsel for the petitioner contended that the termination of the services of the petitioner after about seven years of his appointment without giving any notice or opportunity of hearing as well as without holding any inquiry, is arbitrary. The order of dispensing his services operated to impose on a petitioner a major penalty which could have been done only after following the procedure as laid down in Rule 7 of the Gujarat Panchayat Services (Discipline and Appeals ) Rules, 1964 which has not been done in the present case. Lastly the counsel for the petitioner contended that the order dispensing the services of the petitioner on the alleged irregularity in connection with the bill dated 16-4-1982 as well as on the ground of absence, as such is a stigmatic order and which could have been done only after giving the chargesheet and holding the departmental inquiry against the petitioner.

The counsel for the respondent, on the other hand, does not dispute that the petitioner's services were brought to an end without giving any notice or opportunity of hearing to him. He also does not dispute that the services of the petitioner were brought to an end because of the irregularities committed by him and as he remained wilfully absent.

The termination of the services of the petitioner on the ground of irregularity committed by him and absence from duty is certainly a penalty. It also causes a stigma. The petitioner has come up with a case that he was a permanent employee of the respondent which fact has also not been controverted. Taking into consideration these facts, the respondent could have dispensed the services of the petitioner only in case, the alleged

misconduct is proved against him after holding a full-fledged departmental inquiry and not in the manner in which it has been done. The action of the termination of the services of the petitioner is ex-facie illegal and cannot be allowed to stand.

Now the next question arises what relief to be granted to the petitioner. The order of termination is ex-facie illegal as held above, and as such, the petitioner is entitled for the grant of relief of reinstatement in the services.

The further question is regarding the backwages and how this period of termination of services has to be taken. So far as the backwages are concerned, the petitioner has nowhere stated in the writ petition that since the day his services were brought to an end, he is not in gainful employment elsewhere. The petition has been filed in the year 1982 and the petitioner has not brought on record that for all these years, he remained unemployed. Otherwise also, it is difficult to accept that for all these years, the petitioner remained unemployed. He would have been in gainful employment otherwise it is difficult to survive for all these years. These are the facts which are in the knowledge of the petitioner and he has to disclosed the same before this court. In the circumstances, I do not consider it appropriate to grant any backwages to the petitioner. The petitioner has not led any factual foundation of entitlement of this relief.

However, the order of termination is ex-facie illegal and as such, the petitioner shall be entitled for continuation of his services. This period shall be counted for all the purposes i.e. for seniority, for revision of payscale, for yearly grade increments and for qualifying service for pension and other retirement benefits except actual monetary benefits. The petitioner shall be entitled for the salary from the date he reports to duty alongwith the certified copy of this order. The respondent is directed to notionally arrive at the pay of the petitioner from the day on which he joins the services in pursuance of this order within a period of three months from the date of joining and receipt of certified copy of this order. However, the petitioner shall not be entitled for any arrears. While making the fixation of the notional pay of the petitioner, the respondent shall take into consideration that he shall be entitled for all the grade increments, and secondly, in case, the pay is revised meanwhile, then for the revised pay-scale. However, the acceptance of this Special Civil

Application will not come in way of the respondent to hold an inquiry against the petitioner in respect of the alleged misconduct. Rule is made absolute in the aforesaid terms with no order as to costs.

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